UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,136	03/16/2001	Beverly B. Teter	UMARY3	7554

23599 7590 07/16/2002

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

EXAMINER	
WEDDINGTON, KEVIN E	
ART UNIT	**PAPER NUMBER**
1614	

DATE MAILED: 07/16/2002 10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/720,136	Teter
Examiner	**Art Unit**
Kevin E. Weddington	1614

-- ***The MAILING DATE of this communication appears on the cover sheet with the correspondence address*** --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Apr 12, 2002* .

2a) ☒ This action is **FINAL.** 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under ***Ex parte Quayle***, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *10-18 and 22-50* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *10-18 and 22-50* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Claims 10-18 and 22-50 are presented for examination.

Applicant's amendment filed April 12, 2002 has been received and entered.

Accordingly, the rejections made under 35 U.S.C. 102 and 35 U.S.C. 103 as set forth in the previous Office action at pages 2-5 are hereby withdrawn.

Claim Rejections - 35 U.S.C. § 112

Claims 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is rendered indefinite because the claim states an animal feed composition, but only discloses one component of the composition. Clearly, a composition must have two components. The remaining claims are rendered indefinite to the extent that they incorporate the above terminology.

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 22, 25, 26, 40 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Ölund et al. (PTO-1449).

Ölund et al. teach an antimicrobial composition comprising, (a) fatty acids, (b) antibiotics, and optionally carriers. Clearly the cited reference broadly teaches antimicrobial composition containing the applicant's two components, fatty acid and antibiotics, which can be formulated into a food product, such as feed. Clearly, the cited reference anticipates the applicant's instant invention, therefore, the instant invention is unpatentable.

Claims 22, 25, 26, 40 and 49 are not allowed.

Claim 36 is rejected under 35 U.S.C. 102(a) as being anticipated by Kabara (PTO-1449).

Kabara teaches fatty acids and derivatives and antimicrobial agents used in feed for animals. Note the fatty acids are twelve carbons, such as lauric acid.

Claim 36 is not allowed.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ölund et al.

Ölund et al. was discussed above supra for its features showings fatty acids and antibiotics in a composition and formulated into animal feed.

The instant invention differs from the cited reference in that the cited reference does not teach the specific high lauric acid oils or the specific type of bacteria is destroyed by the said composition. However, one skilled in the art would have been motivated to use any type of fatty acid that possess antibacterial properties in the absence of evidence to the contrary. Since the fatty acids are known to be effective against various bacteria, it would have been obvious the instant fatty acids will kill *Salmonella typhimurium* in the absence of evidence to the contrary.

Claims 37-39, 41-47 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kabara.

Kabara was discussed above supra for its features showing fatty acids used an antimicrobial agent and formulated into animal feed.

The instant invention differs from the cited reference in that the cited reference does not teach the specific high lauric acid oils or the specific range of the oils. However, one

skilled in the art would have been motivated to use any type pf high lauric acid oil set forth by the applicant should the oil contains the lauric acid which is known for its antimicrobial activity. Clearly, the other high lauric acid oils possess the same activity as lauric acid per se in the absence of evidence to the contrary. The determination of a range amount having optimum effectiveness against various bacteria or microbes is well within the level of one having ordinary skill in the art, and the skilled artisan would have been motivated to determine an optimum range amount to get the maximum effectiveness of the high lauric acid.

Claims 37-39, 41-47 and 50 are not allowed.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee

pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner K. Weddington whose telephone number is (703) 308-1235.

Kevin E. Weddington
Primary Examiner
Art Unit 1614

K. Weddington

July 14, 2002